

All Appropriate What?

AAI Updated Information

New Grant Applicant Series

May 3, 2023

Meet Our Team



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WVU TAB

EPA Region 3 Technical Assistance to
Brownfields (TAB) provider

Resources we offer include **Brownfield
Education**

- Including today's webinar!



All Appropriate...What??

What does All Appropriate Inquiries mean to your Brownfield grant?



 West Virginia University
TECHNICAL ASSISTANCE TO
BROWNFIELDS COMMUNITIES

**Downstream
Strategies**

Ideas that sustain.

May 3, 2023

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West Virginia-
based offices

Founded in
1997

16
Qualified
staff

Downstream Strategies



Ideas that sustain.



Strengthen economies • Sustain healthy environments • Build resilient communities

Field services

Environmental monitoring
Remediation
Ecological restoration
Trail planning & construction
Outreach & engagement

Science

Science-based planning
Geospatial analysis
Expert testimony & litigation support
Decision support systems
Renewable energy analysis

Community

Community & land use planning
Economic & demographic analysis
Food system planning
Redevelopment
Grant writing

What we will discuss today

***Who** needs to worry about All Appropriate Inquiries?*

***What** are AAI?*

***Why** should you care?*

***When** do you need to have it done?*

***How** do you do it?*

Who needs to worry about AAI?

Well, you!

All site characterization or assessment activities completed using EPA Brownfields Assessment Grant funds must be conducted in compliance with the AAI Final Rule at 40 CFR 312

AAI is also conducted prior to most commercial real estate transaction.

What are All Appropriate Inquiries?

According to US EPA...

“AAI is the process of evaluating a property’s environmental conditions and assessing potential liability for any contamination.”

AAI must be completed in compliance with the AAI Final Rule at 40CFR 312.

Why should you care?

To obtain protection from potential liability under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) (aka “Superfund”)

- Innocent landowners
- Contiguous property owners
- Bona fide prospective purchasers
- Units of state and local government
- Government entities that acquire property through eminent domain

Innocent landowners

Persons who can demonstrate that they “did not know and had no reason to know” prior to purchasing a property that any hazardous substance that is the subject of a release or threatened release was disposed of on, in, or at the property.

Contiguous property owners

Persons who own property that is contiguous or adjacent to a facility or property that is the only source of contamination found on the property.

Must demonstrate that they had “no reason to know” prior to purchasing a property.

Bona fide prospective purchasers

Persons may buy property with knowledge of contamination, provided they brought the property after January 11, 2002.

Government entities

Entities that acquire ownership or control involuntarily through bankruptcy, tax delinquency, or abandonment.

When do you need to have it done?

BEFORE making a purchase, within one year prior to date of acquisition of a property

BUT certain aspects must be conducted or updated within 180 days before acquiring ownership of a property

- Interviews
- Review of government records
- On-site inspection
- Environmental liens

Whatever You Do...

DO NOT purchase a property without conducting AAI first



How do you do it?

Follow the ASTM E1527-21 and ASTM E2247-16 standards

*E1527-21 Standard Practice for Environmental Site Assessments:
Phase I Environmental Site Assessment Process*

(Effective February 13, 2023)

*E2247-16 Standard Practice for Environmental Site Assessments:
Phase I Environmental Site Assessment Process for Forestland or
Rural Property*

How do you do it?

Must be performed by an “Environmental Professional”

- A state or tribal issued certification or license and three (3) years of full-time work experience;
- A bachelor’s degree or higher from an accredited institution of higher education in a relevant discipline of science or engineering and five (5) years of full-time relevant work experience; **OR**
- Ten (10) or more years of relevant, full-time work experience.

How do you do it?

Phase I Environmental Site Assessment (ESA)

Phase I ESA

The purpose of the Phase I ESA is to assess the property, to the extent feasible, for the potential presence of ***recognized environmental conditions (RECs)***,

“(1) the **presence** of hazardous substances or petroleum products in, on, or at the subject property due to a release to the environment;

(2) the **likely presence** of hazardous substances or petroleum products in, on, or at the subject property due to a release or likely release to the environment; or

(3) the presence of hazardous substances or petroleum products in, on, or at the subject property under conditions that pose a **material threat** of a future release to the environment.”

Phase I ESA

A REC is NOT a **de minimis condition**, which is

“ a condition related to a release that generally does not present a threat to human health or the environment and that generally would not be the subject of an enforcement action if brought to the attention of the appropriate governmental agencies.”

Phase I ESA

A Controlled Recognized Environmental Condition (CREC) is defined as a REC that has been addressed to the satisfaction of the applicable regulatory authority, *with hazardous substances or petroleum products allowed to remain in place subject to the implementation of required controls*

A Historical Recognized Environmental Condition (HREC) is a REC that has been addressed to the satisfaction of the applicable regulatory authority, *without subjecting the property to any required controls*

A Vapor Encroachment Condition (VEC) is the presence or likely presence of chemicals of concern (COC) vapors in the sub-surface from contaminated soil or groundwater either on or near the property

Phase I ESA components

- Interviews with current and past owners, operators, and occupants, or neighboring property owners if property vacant.
- Review of historical sources of information.
- Review of federal, state, tribal and local government records.
- Visual inspection of the facility and adjoining properties.
- Review of commonly known or reasonably ascertainable information about the property.

Phase I ESA components

- Assessment of RECs.
- Identification of any significant data gaps in information collected that affects the ability of the environmental professional to identify RECs.
- The results of an AAI investigation must be documented in a written report, signed by an environmental professional.

What is a REC?



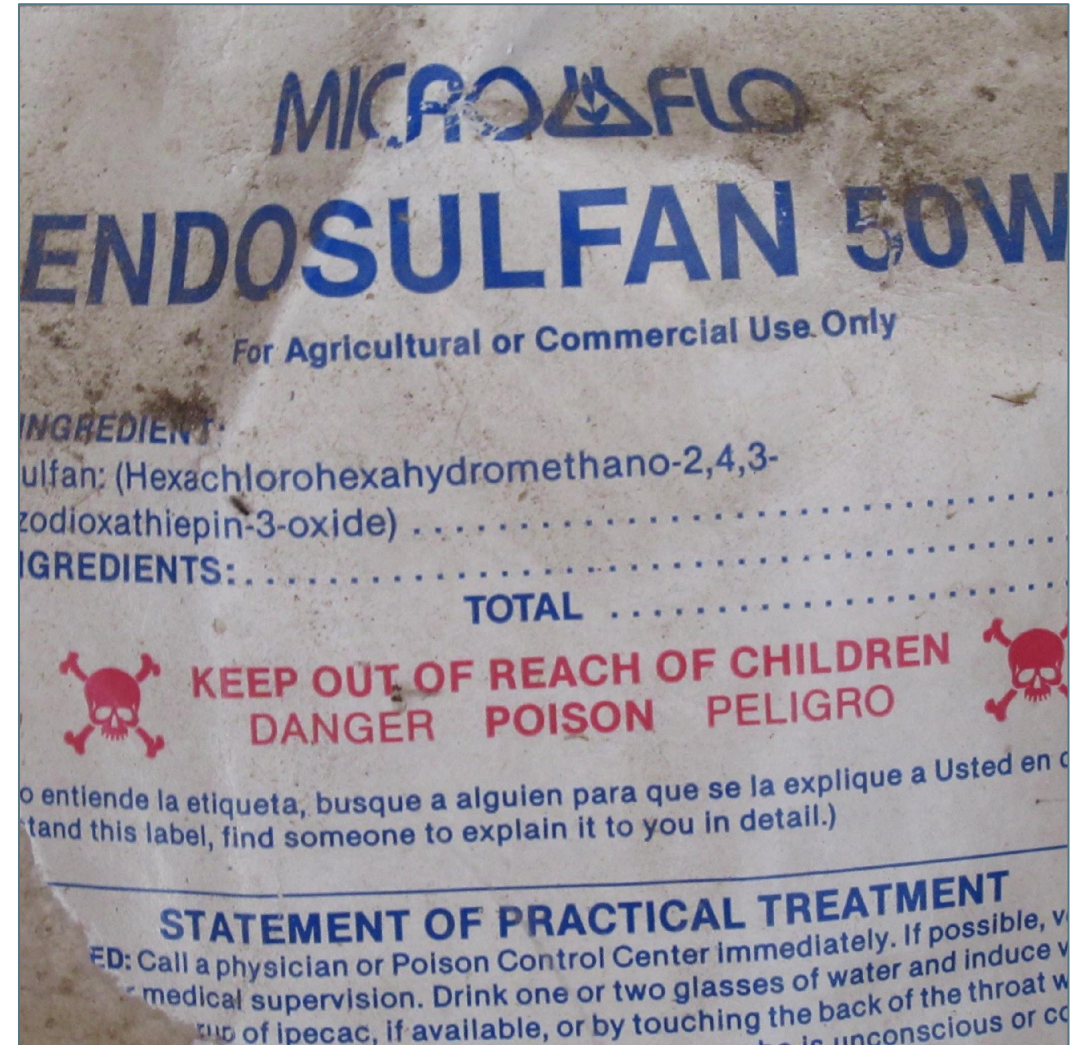
What is a REC?



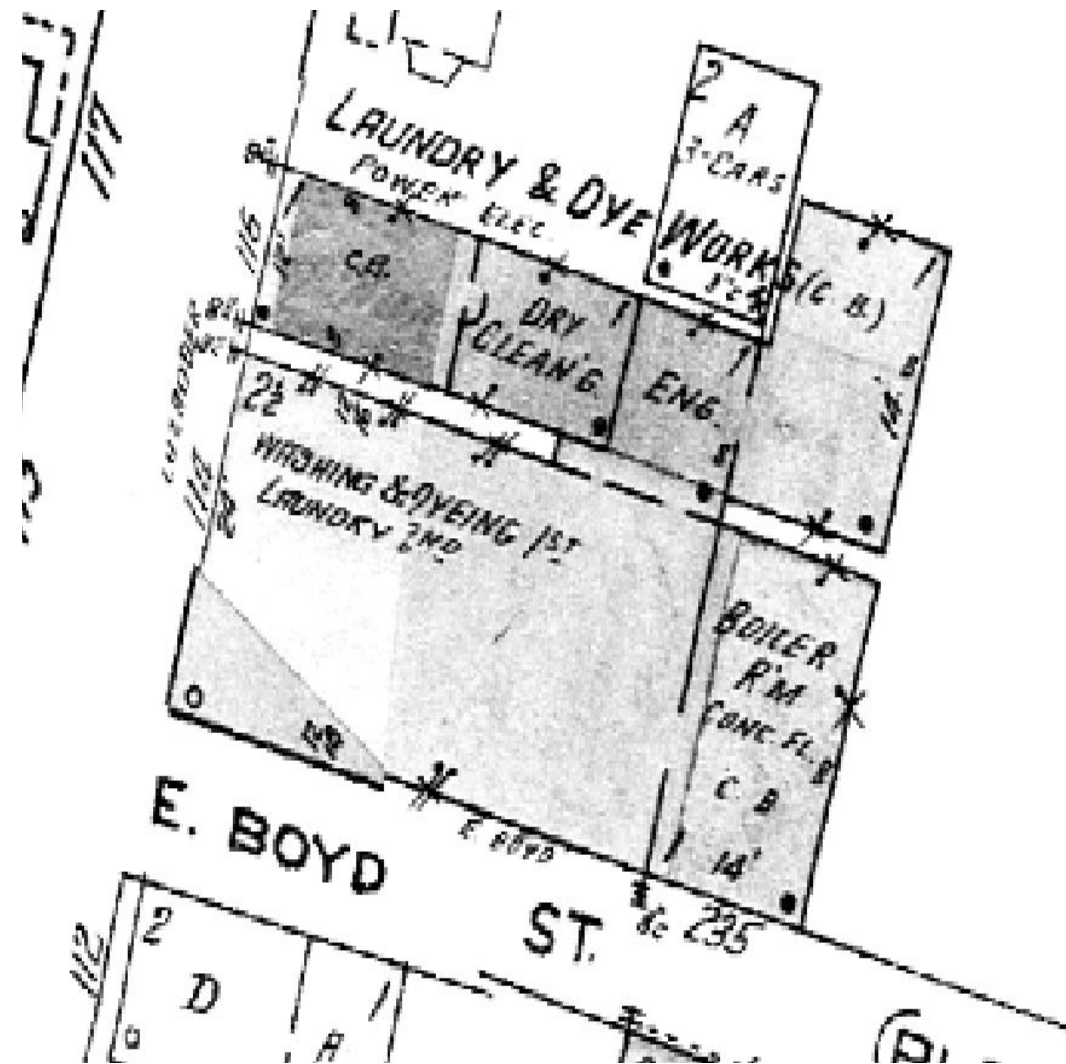
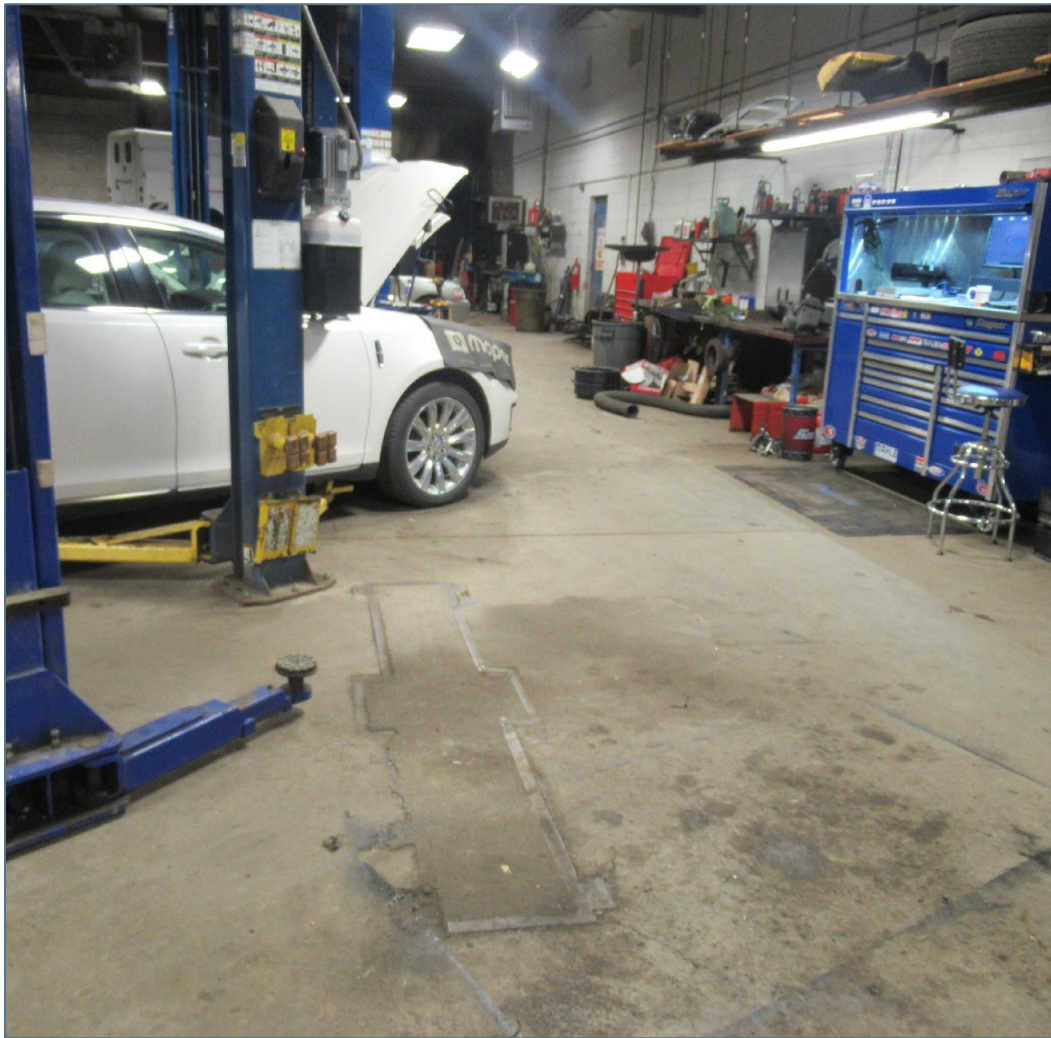
What is a REC?



What is a REC?



What is a REC?



What is *maybe* a REC?



What is *maybe* a REC?



What is *maybe* a REC?



What if you have a REC?

Confirm if the REC exists.

Phase II Environmental Site Assessment (ESA)

*ASTM E1903-11 Standard Practice for Environmental Site Assessments:
Phase II Environmental Site Assessment Process*



EPA Phase II ESA requirements

“Intrusive” investigation (Phase II ESA) triggers requirements through EPA Brownfields

- Quality Assurance Program Plans (QAPrP)
- Field Sampling Plans (FSP)
- Sampling requirements
- Quality Assurance/Quality Control (QA/QC) procedures
- Data validation

Phase I ESA

Non-Scope Considerations

- Asbestos
- Lead-based paint
- Mold / biological
- Cultural / historic resources
- Endangered species
- PFAS/PFOA
- Substances not defined as “hazardous substances”

Questions?

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Questions





WVU TAB Can Help!

WVU TAB

Technical Assistance to Brownfields (TAB)

All WVU TAB services are **FREE** for the Mid-Atlantic Region

Key resources include:

- **Brownfield Education**
 - Trainings, webinars, events
- **Resource Identification**
 - Grant writing assistance, grant review, resource road maps
- **Local Brownfield Program Support**
 - Brownfield inventory development, questions on sites, technical support
- **Project Development & Design Assistance**
 - Site-specific assistance, design support from WVU Davis College



Upcoming Events

State Conferences

VA Brownfields Conference

- Danville, VA
- June 13-15, 2023
- Register [here](#)

WV Brownfields Conference

- Wheeling, WV
- September 12-14, 2023

TAB Webinars

Job Training Grants

- TBD

Procurement Process & Advice

- TBD
- Check back for registration [here](#)

Other

2023 National Brownfields Conference

- Detroit, MI
- August 8-11, 2023
- Register [here](#)



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